

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Aloha Housewares, Inc.

DEFENDANTS

Fanimation Design & Manufacturing, Inc.

(b) County of Residence of First Dallas County, Texas
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED

(c) Attorney's (Firm Name, Address, and Telephone Number)

Theodore G. Baroody, John R. Emerson
Haynes and Boone LLP
901 Main Street, Suite 3100
Dallas, Texas 75202
(214) 651-5000

Attorneys (If Known)

APR 11 2003

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff)

(For Diversity Cases Only)

- PTF DEF
- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) _____ ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause)

Do not cite jurisdictional statutes unless diversity)

28 USC §§ 2201, 2202, 15 USC § 1125, Declaratory judgment of trademark invalidity and non-infringement

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

Declaratory Judgment

CHECK YES only if demanded in complaint

JURY DEMAND:

☒ Yes☐ No**VIII. RELATED CASE(S)** (See instructions):

IF ANY

JUDGE _____

DOCKET NUMBER _____

DATE

4/11/03

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

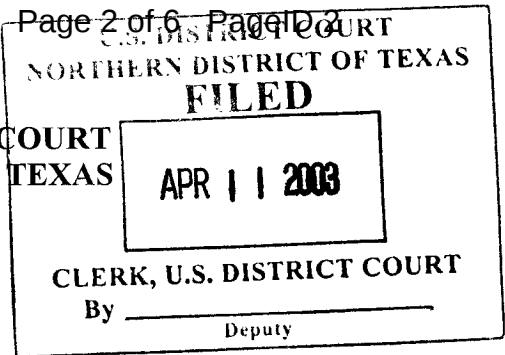
APPLYING IFP _____

JUDGE _____

MAG JUDGE _____

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



ALOHA HOUSEWARES, INC.,

Plaintiff,

v.

FANIMATION DESIGN &
MANUFACTURING, INC.

Defendant.

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CIVIL ACTION NO.

3:03-cv-00748-D

ORIGINAL COMPLAINT AND APPLICATION FOR DECLARATORY JUDGMENT

Aloha Housewares, Inc. files this its Original Complaint and Application for Declaratory Judgment against Fanimation Design & Manufacturing, Inc. and would respectfully show the Court the following:

Parties

1. Plaintiff Aloha is a corporation organized under the laws of the State of Texas and maintains its principal place of business at 6781 Exchange Drive, Mansfield, Texas 76063.

2. On information and belief, Defendant Fanimation is a corporation organized under the laws of the State of Indiana, with its principal place of business at 945 Monument Drive, Lebanon, Indiana 46052. On information and belief, Fanimation does business in Texas and within this judicial district.

Jurisdiction and Venue

3. Jurisdiction is proper in this Court under 28 U.S.C. §§ 2201 and 2202 because a claim is presented for declaratory judgment and under 28 U.S.C. § 1338(b) and 15 U.S.C. § 1121 because this claim arises under the laws of the United States relating to trademarks. Venue is proper in this judicial district under 28 U.S.C. § 1391.

The Controversy Between the Parties

4. Fanimation asserts that the three-dimensional product configuration of its palm blade-shaped ceiling fan blade (the “Palm Blade Trade Dress”) is protectable trade dress. Fanimation filed with the United States Patent and Trademark Office (“PTO”) an application for registration of the Palm Blade Trade Dress as a trademark. A copy of this proposed trademark registration application status – Serial No. 75/921703 (“the ‘703 Application”) – is attached as Exhibit “A” to this Complaint.

5. After the PTO published the ‘703 Application for opposition, Aloha determined that it would be damaged by the registration of the Palm Blade Trade Dress as a federally-registered trademark and, moreover, that the Palm Blade Trade Dress was not inherently distinctive, did not have acquired distinctiveness (or secondary meaning), and was functional. Aloha therefore filed with the Trademark Trial and Appeal Board (“TTAB”) a Notice of Opposition to the federal registration of the Palm Blade Trade Dress.

6. Fanimation subsequently filed suit against Aloha in the United States District Court for the Southern District of Indiana, Indianapolis Division (the “Indiana Suit”), alleging,

inter alia, that Aloha's "Galleria" ceiling fan blades infringed and diluted Fanimation's alleged Palm Blade Trade Dress under 15 U.S.C. §§ 1125(a) and (c).

7. The TTAB suspended the opposition proceedings pending the outcome of the Indiana Suit.

8. The district court in Indianapolis dismissed Fanimation's Indiana Suit by a Final Judgment dated March 27, 2003 because it determined that the court did not have jurisdiction over Aloha.

9. Therefore, there exists a substantial and continuing justiciable controversy between Aloha and Fanimation as to Fanimation's alleged trademark rights in the Palm Blade Trade Dress or its right to threaten or to maintain suit for infringement or dilution of the Palm Blade Trade Dress, or Fanimation's legal right to demand that Aloha cease and desist its importation and/or offer for sale and/or sale of its ceiling fan product.

Declaration of Non-Protectability and Non-Registrability

10. Aloha repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

11. The Palm Blade Trade Dress has not acquired the requisite distinctiveness (or secondary meaning) to be entitled to protection under 15 U.S.C. § 1125(a) as unregistered trade dress or under 15 U.S.C. § 1125(c) as a famous mark.

12. The Palm Blade Trade Dress is functional and therefore not entitled to protection under 15 U.S.C. § 1125(a) as unregistered trade dress.

13. The Palm Blade Trade Dress has not acquired the requisite distinctiveness (or secondary meaning) to be entitled to registration under 15 U.S.C. § 1051 *et seq.*

Declaration of Non-Infringement and Non-Dilution

14. Aloha does not infringe or dilute any protectable feature of the Palm Blade Trade Dress.

Prayer

WHEREFORE, plaintiff Aloha respectfully requests entry of judgment and an order as follows:

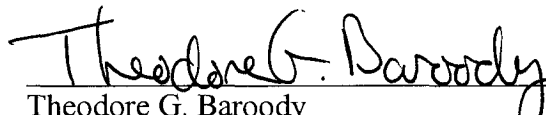
- a. Declaring and adjudging that the Palm Blade Trade Dress is not entitled to protection as unregistered trade dress under 15 U.S.C. § 1125(a) or as a famous mark under 15 U.S.C. § 1125(c);
 - b. Declaring and adjudging that the Palm Blade Trade Dress is not entitled to registration under 15 U.S.C. § 1051 *et seq.*;
 - c. Declaring and adjudging that Aloha does not infringe or dilute any protectable feature of the Palm Blade Trade Dress;
 - d. Enjoining Fanimation, its officers, agents, representatives, employees, and attorneys, and those in active concert or participation with them, from asserting or attempting to enforce the Palm Blade Trade Dress against Aloha or its customers;
 - e. Finding that this is an exceptional case and awarding Aloha its reasonable attorney fees pursuant to 15 U.S.C. § 1117(a);
 - f. Awarding Aloha its costs and expenses in bringing and prosecuting this action;
- and

- g. Awarding Aloha such other and further relief that this Court may deem just and proper.

Demand for Jury Trial

Aloha hereby demands a trial by jury on all issues in this matter.

Respectfully submitted,


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Texas State Bar No. 24002053

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